

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
IN RE: CLAUDIA J. VARGAS

Debtor,

**Chapter 13**  
**Case No.: 18-43462-ESS**

**NOTICE OF MOTION**

-----X

**PLEASE TAKE NOTICE:** that upon the Affirmation of Seth D. Weinberg, Esq. an attorney associated with the firm of Hasbani & Light, P.C., attorneys for Winward Bora, LLC (“Movant”), a secured creditor, dated October 18, 2018, a motion will be made before the Honorable Elizabeth S. Stong on the 13th Day of November 2018 at 9:30 AM (the “Hearing Date”), at the Eastern District Bankruptcy Court located at 271-C Cadman Plaza East - Brooklyn, NY 1120, of that day or as soon thereafter as counsel can be heard for entry of an Order dismissing this case because the Debtor’s secured debt exceeds the jurisdictional limit imposed by Bankruptcy Code § 109(e).

**PLEASE TAKE FURTHER NOTICE:** that objections, if any, to the relief requested shall be in writing, shall state with particularity the grounds for the objection, shall be filed with the Clerk of the Bankruptcy Court and served upon the undersigned counsel seven days prior to the Hearing Date.

Dated: New York, New York  
October 17, 2018

**HASBANI & LIGHT, P.C.**

By: /s/ Seth D. Weinberg  
Seth D. Weinberg  
450 Seventh Avenue, Suite 1408  
New York, New York 10123  
Telephone: (646) 490-6677  
Email: [sweinberg@hasbanilight.com](mailto:sweinberg@hasbanilight.com)  
*Counsel for Creditor Winward Bora, LLC*

Debtor:

Claudia J. Vargas  
14-00063 Hancock Street  
Ridgewood, NY 11385

Chapter 13 Trustee:

Marianne DeRosa  
125 Jericho Tpke  
Suite 105  
Jericho, NY 11753

Office of the United States Trustee:

Office of the United States Trustee  
U. S. Federal Office Building  
201 Varick Street  
Suite 1006  
New York, NY 10014

Debtor's Counsel:

Brian McCaffrey, P.C.  
Brian McCaffrey  
77-18 Sutphin Blvd  
1<sup>st</sup> Floor  
Jamaica, NY 11435

Entitles Having Filed A Notice of Appearance:

Fein, Such & Crane, LLP  
*Counsel for Creditor JP Morgan Chase Bank, NA*  
David P. Case  
28 East Main Street  
Suite 1800  
Rochester, NY 14614

Gross Polowy, LLC  
*Counsel for Creditor Rushmore Loan Management Services, LLC*  
Courtney R. Williams  
1775 Wehrle Drive  
Suite 100  
Williamsville, NY 14221

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X

IN RE: CLAUDIA J. VARGAS

**Chapter 13**  
**Case No.: 18-43462-ESS**

Debtor,

-----X

**AFFIRMATION IN SUPPORT OF MOTION FOR AN ORDER UNDER BANKRUPTCY  
CODE § 109(e) DISMISSING THIS CASE**

Seth D. Weinberg, Esq. the undersigned, an attorney duly admitted to practice before this Court, affirms under penalty of perjury as follows:

1. I am an attorney with Hasbani & Light, P.C., attorneys for Winward Bora, LLC (the “Movant”), and as such I am fully familiar with the facts and circumstances of this case.
2. I make this Affirmation in Support of the Movant’s motion for an Order dismissing this case pursuant Bankruptcy Code § 109(e).

**Background**

3. The Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code on June 14, 2018. *See*, ECF Doc No.: 1.

4. On August 13, 2018, JPMorgan Chase Bank, National Association filed a proof of claim for a secured claim in the amount of \$545,285.85. *See*, the Claims Register annexed hereto as **Exhibit A** at Claim #4.

5. On August 21, 2018, the NYC Office of Administrative Trials and Hearings filed a proof of claim for a secured claim in the amount of \$3,751.45. *See, id.* at Claim #6.

6. On that same day, Rushmore Loan Management Services, LLC filed a proof of claim for a secured claim in the amount of \$672,880.69. *See, id.* at Claim #7.

7. Finally, on that same day, Winward Bora, LLC filed a proof of claim for a secured claim in the amount of \$373,218.76. *See, id.* at Claim #8.

Cause Exists to Dismiss This Case Pursuant to § 109(e)

8. The Debtor is ineligible to file under Chapter 13 and the case should be dismissed. Pursuant to Bankruptcy Code §109(e) entitled “who may be a debtor,” only an “individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, secured debts of less than \$1,149,525.”

9. A proof of claim executed and filed in accordance with bankruptcy rules, constitutes *prima facie* evidence of the validity and amount of the claim, and that claim would be considered in determining a debtors' eligibility for Chapter 13. *See, In re Jerome*, 112 B.R. 563 (Bankr. S.D.N.Y. 1990); *see also*, Bankr.Code, 11 U.S.C. §§ 109(e), 1301 et seq.

10. Here, the proofs of claim concerning secured claims total \$1,595,136.75. *See, Exhibit A* Claims # 4, 6, 7, and 8. Accordingly, the \$1,149,525 threshold required for Chapter 13 has been exceeded by \$445,611.76.

11. The Movant previously moved by Notice of Motion dated July 31, 2018 seeking relief from the automatic stay under Bankruptcy Code §362. The motion was adjourned to November 1, 2018. The Debtor then filed a motion seeking to expunge the Movant's claim. Even in the event that the Court determine that the Movant's claim should be expunged, which it should not, the \$1,149,525 threshold required for Chapter 13 has been exceeded by \$72,392.99 because of the other three secured claims.

12. For these reasons, it is respectfully asserted that cause exists under Bankruptcy Code §109(e) to dismiss this case because the Debtor is ineligible to be a Chapter 13 debtor.

**WHEREFORE**, it is respectfully requested that this Court enter an Order dismissing the Debtor's case because he is ineligible to be a debtor under Bankruptcy Code §109(e) because he exceeds the jurisdictional limit imposed for secured debt.

Dated: New York, New York  
October 17, 2018

**HASBANI & LIGHT, P.C.**

By: /s/ Seth D. Weinberg  
Seth D. Weinberg  
450 Seventh Avenue, Suite 1408  
New York, New York 10123  
Telephone: (646) 490-6677  
Email: [sweinberg@hasbanilight.com](mailto:sweinberg@hasbanilight.com)  
*Counsel for Creditor Winward Bora, LLC*